



ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

Probate Status Hearing Re: the Filing of the First Account and/or Petition for Final Distribution

DOD: 3/24/13		<p>NEEDS/PROBLEMS/COMMENTS:</p> <p style="text-align: center;"><u>OFF CALENDAR</u></p> <p>First and Final Account filed 1/28/16 is set for hearing on 3/9/16</p>
Cont. from 120915		
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
		Reviewed by: skc
		Reviewed on: 1/28/16
		Updates:
		Recommendation:
		File 6 – Lawler

Petition for Appointment of Guardian of the Person

		See petition for details.	NEEDS/PROBLEMS/COMMENTS:
Cont. from 060315, 070815, 072215			Note: On 1/26/16, Petitioner filed a request to continue this hearing because she has been informed that the minor has been placed with his older sister and she has not been served.
	Aff.Sub.Wit.		
✓	Verified		
	Inventory		
	PTC		
	Not.Cred.		
	Notice of Hrg	X	
	Aff.Mail		
	Aff.Pub.		
	Sp.Ntc.		
	Pers.Serv.	X	
✓	Conf. Screen		
	Letters	X	
✓	Duties/Supp		
	Objections		
	Video Receipt		
✓	CI Report		
	Clearances	X	
	Order	X	
	Aff. Posting		
	Status Rpt		
✓	UCCJEA		
	Citation		
	FTB Notice		
			1. <u>As previously noted:</u> This minor is a ward of the Juvenile Delinquency Court. Therefore, this Probate Court does not have jurisdiction to grant a temporary or general guardianship for this minor. Petitioner may wish to pursue placement in the proper Court.
			<u>If this petition goes forward, the following issues exist:</u>
			2. Need Child Information Attachment (GC-210CA).
			3. Need Notice of Hearing.
			4. Need proof of personal service of Notice of Hearing with a copy of the petition at least 15 days prior to the hearing per Probate Code §1511 on: - Minor Imani Byrd - Mother (Name not provided)
			5. Need proof of service of Notice of Hearing with a copy of the petition at least 15 days prior to the hearing per Probate Code §1511 on the grandparents who did not waive notice.
			6. Notice to the minor's juvenile probation officer / County of Fresno may also be required.
			Reviewed by: skc
			Reviewed on: 1/28/16
			Updates:
			Recommendation:
			File 12- Byrd

Petition for Order: (1) Domesticating Petitioner's Minnesota Adult Guardianship Order; (2) Removing Teng Yang as Trustee; (3) Appointing Guardian Nicole Ballard as Successor Trustee; and (4) Transferring Situs of Trust to Minnesota

Age: 21		EX PARTE ORDER HOLDING FUNDS IN ABEYANCE PENDING HEARING was granted 9/25/15.	NEEDS/PROBLEMS/COMMENTS:
DOB: 12/29/93			
		NICOLE BALLARD , Guardian of the Person as appointed in Hennepin County, MN, is Petitioner.	Continued from 12/17/15. As of 1/28/16, nothing further has been filed.
Cont. from 110315, 121715			
<input type="checkbox"/>	Aff.Sub.Wit.	Petitioner states the PAO VUE XIONG SPECIAL NEEDS TRUST was established 2/17/00 in Fresno Superior Court Case 0627917-8 (Pao Vue Xiong, et al, v. National Railroad Passenger Corporation, et al.) following a train accident in Fresno, CA, which left Pao permanently disabled. Pao's mother, TENG YANG , was appointed trustee and continues to hold this title. Pao and Teng moved to Minnesota in approx. 2012; however, situs of the trust has not been transferred to Minnesota. Petitioner and Teng were were appointed as Co-Guardians of Pao on 4/12/12. Petitioner states Teng has not been involved in Pao's care on a consistent basis and is difficult to contact. Teng has not given any of the trust money to Pao since August 2014. On 9/10/15, Teng was removed as co-guardian and Petitioner was appointed sole guardian of the person in Hennepin County, MN, Case No. 27-GC-PR-12-53. Pao resides in Mendota Heights, MN. Petitioner resides in St. Paul, MN. Teng's last known residence was in Minneapolis, MN; however, it is unknown if she actually resides there.	Note: Order on Ex Parte Application for Order Holding Funds in Abeyance Pending Hearing on the Petition was entered 9/25/15 and requires that "Wilton (formerly CAN Structured Settlements), Custodian of Settlement Funds" is ordered to hold any funds received for Pao's benefit pending this hearing. Note: Petitioner filed a Supplement to the petition on 12/9/15. <u>SEE ADDITIONAL PAGES</u>
<input checked="" type="checkbox"/>	Verified		
<input type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC		
<input type="checkbox"/>	Not.Cred.		
<input checked="" type="checkbox"/>	Notice of Hrg		
<input type="checkbox"/>	Aff.Mail x		
<input type="checkbox"/>	Aff.Pub.		
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.		
<input type="checkbox"/>	Conf. Screen	<u>SEE ADDITIONAL PAGES</u>	
<input type="checkbox"/>	Letters		
<input type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report		
<input type="checkbox"/>	9202		
<input type="checkbox"/>	Order x		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA	Reviewed by: skc Reviewed on: 1/28/16 Updates: Recommendation: File 15 – Xiong	
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		

Page 2

Petitioner states as trustee, Teng agreed to hold the following property for the benefit of Pao:

- a) \$25,506.89, which was used to set up the trust;
- b) \$650/month in aid, which was paid to the trust until Pao turned 18;
- c) \$1,643.06/month in aid, which would continue for Pao's life with 20 years guaranteed, commencing 12/20/11 and increasing at 2% compounded interest annually.

Petitioner requests an order domesticating Petitioner's Minnesota Adult Guardianship Order pursuant to Probate Code §2013. (*Examiner's Note: This section is effective 1/1/16. See issues.*)

Petitioner requests Teng be removed as trustee pursuant to Probate Code §15642. Petitioner states Teng has committed a breach of trust by failing to make distributions or act as trustee since August 2014. Despite Petitioner's attempts, she has been unable to locate or communicate with Teng in over a year. The trust makes it clear that there exist basic living needs that public benefit programs for the disabled may not provide. Thus, it is *vitally important* that Pao continue to receive such additional services to meet these needs in order to maintain an adequate level of human dignity and humane care. Because Teng's failure to provide distributions leads to an inadequate level of human dignity and care for Pao, the Court has good cause to remove her as trustee.

Petitioner requests appointment as successor trustee. Petitioner states the named successor trustee, Tong Houa Xiong, Father of Pao, is incarcerated and unable to act as successor trustee. Petitioner is a professional fiduciary and Pao's guardian and is the best person to serve in this capacity and consents to serve as trustee.

Petitioner requests to transfer the situs of the trust to Hennepin County, Minnesota pursuant to Probate Code §2802(c) (transfer of personal property out of state) and Probate Code §17401 and §17404 (transfer of trust property or place of administration). Petitioner states Pao resides in Mendota Heights, Minnesota. Because Pao is permanently disabled and the purpose of the trust is to provide Pao with necessary supplemental funding to ensure his proper care, it would be in the best interest of the trust to be located in the jurisdiction in which he resides. Transferring the place of administration would not violate any terms of the trust.

Petitioner prays as follows:

1. For an order domesticating Petitioner's Minnesota guardianship order to California;
2. For an order removing Teng Yang as trustee of the trust;
3. For an order appointing Nicole Ballard as successor trustee of the trust;
4. For an order transferring the trust property and place of administration to Hennepin County, State of Minnesota; and
5. For such other and further relief as the Court deems proper.

SEE ADDITIONAL PAGES

Page 3 – NEEDS/PROBLEMS/COMMENTS: (*Petitioner's responses to each issue are below in italics.*)

1. Need Petition and Order Appointing Petitioner as Guardian Ad Litem for Pao Vue Xiong. Petitioner does not have standing as guardian of the person only to bring this petition on behalf of the beneficiary without appointment as Guardian Ad Litem in this matter pursuant to Probate Code §1003. See Judicial Council Forms GC-100 and GC-101.

Supplement filed 12/9/15 states Petitioner has standing as an interested party and fiduciary and believes appointment as GAL would unnecessarily deplete the already limited resources of the trust, further delay proceedings, and is unlikely to lead to any other results because the mother is unreachable. Petitioner has attached as Exhibit A an ex parte GAL application if the Court feels it is necessary.

Examiner's Note: An attachment to a declaration does not constitute a filed petition. The GAL should be properly filed.

2. Petitioner requests Registration of Order of Conservatorship under Probate Code § 2011. Per code commentary, the purpose of registration is to facilitate enforcement of conservatorship orders of other states or to facilitate real estate or care transactions in California. This does not appear to be the case here, so it is unclear what the purpose of registration would be, unless it is simply for standing for the filing this petition. If so, appointment as GAL is necessary as noted above.

Regardless, such registration should be filed as a separate case pursuant to Local Rules 7.1.2 and 7.19, and will be subject to a separate filing fee, separate notice, and filing of documents as follows:

- Judicial Council Cover Sheet (beginning 1/1/16);
- Certified copies of Order Appointing Guardian and Letters per Probate Code §2011;
- Duties of Conservator (GC-348) per Probate Code §§ 2015, 1834, 1835;
- Service of Notice of Intent to Register Conservatorship on the Court supervising the conservatorship (County of Hennepin, State of Minnesota District Court, Fourth Judicial District, Probate-Mental Health Division), every person who would be entitled to notice of a petition for the appointment of a conservator in Minnesota and in California (see Probate Code §1821 et seq.).

Supplement filed 12/9/15 states Although Petitioner believes she has standing under Probate Code §48(c), Petitioner seeks registration in an abundance of caution to solidify the issue of standing in California.

3. It appears this special needs trust was established in 2000 within the minor's compromise in Fresno Superior Court Case No. 0627917-8, but the trust itself was never properly filed in the Probate Court for review and continuing Court supervision, as required for special needs trusts. The trust does not require bond or any accounting by the trustee and is missing substantially all the language and provisions required for special needs trusts in California.

At this time, the trust has now been brought under the jurisdiction and supervision of this Probate Court and the Court will require compliance with Local Rule 7.19, which includes bond and probate accounting. No payment of fees to attorneys or trustee may be made without prior Court approval.

SEE ADDITIONAL PAGES

Page 4 – NEEDS/PROBLEMS/COMMENTS (Cont'd):

4. The Court may require clarification of how payments were made and distributed and used prior to August 2014 or accounting by the trustee or custodian pursuant to Cal. Rule of Court 7.903(c) and Probate Code §§ 1060 et seq., and 2620, et seq.

Re #3 and #4 above: Supplement filed 12/9/15 states Petitioner has no objections to the Court's inquiry as to how payments have been made prior to August 2014. Counsel for Petitioner has been working with counsel for the custodian of settlement, Wilton RE Holdings Ltd., to determine the facts surrounding prior distributions and payments. However, Wilton's records only show that checks prior to August 2014 were cashed, not how the funds were expended. Because the former trustee is missing, no information is available to Petitioner. Wilton advises it holds funds for Pao's benefit (and therefore payable to the SNT) in the amount of \$27,761.32 comprised of monthly payments from August 2014 – November 2015.

5. Petitioner requests transfer of the trust situs to Minnesota; however, the Court may require further authority for transfer of the trust situs to Minnesota and may retain jurisdiction for the purpose of accounting pursuant to Probate Code §2630.
6. If Petitioner is appointed as successor trustee, the Court will require bond pursuant to Probate Code §§ 15602, 2620 et seq., and Cal. Rule of Court 7.903(c). Based on the allegation that the trust consists of monthly income of at least \$1,643.06, increasing by 2% annually, beginning 2011, examiner calculates the current monthly income at approx. \$1,778.50, which would require bond including cost of recovery of \$23,476.20. (This assumes there income only, no principal.)

Supplement filed 12/9/15 states if bond is required, Petitioner shall post bond accordingly; however, because the trust situs is likely to be transferred to Minnesota, Petitioner requests that no bond be required.

7. Petitioner states she is a professional fiduciary. The Court may require license information. For an example of the information that may be required, see Judicial Council Form GC-210(A-PF) Professional Fiduciary Attachment to Petition for Appointment of Guardian or Conservator.

Supplement filed 12/9/15 states Minnesota does not require that its professional fiduciaries be licensed, but does required a background study. Attached is Ms. Ballard's background study and resume.

8. Need proposed order pursuant to Local Rules 7.1.1.F and 7.6.

Supplement filed 12/9/15 attaches a proposed order.

Examiner's Note: The Court requires that a proposed order, along with copies to conform, be lodged prior to the hearing for signature and filing if granted. Attaching to the filed supplement is not sufficient.